

RECIPROCAL TRADE

Agreement signed at Managua March 11, 1936¹

Proclaimed by Nicaragua August 31, 1936

Proclaimed by the President of the United States September 1, 1936

Entered into force October 1, 1936

Certain provisions terminated March 10, 1938, by agreement of February 8, 1938²

Remaining provisions terminated April 28, 1950, by agreement of February 28, 1950³

50 Stat. 1413; Executive Agreement Series 95

The President of the United States of America and the President of the Republic of Nicaragua, being desirous of strengthening the traditional bonds of friendship between the two countries by maintaining the principle of equality of treatment as the basis of commercial relations and by granting mutual and reciprocal concessions and advantages for the promotion of trade, have, through their respective Plenipotentiaries, arrived at the following Agreement:

ARTICLE I²

Articles the growth, produce or manufacture of the United States of America, enumerated and described in Schedule I¹ annexed to this Agreement and made a part thereof, shall, on their importation into the Republic of Nicaragua, be exempt from ordinary customs duties in excess of those set forth in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the Republic of Nicaragua in force on the day of the signature of this Agreement.

ARTICLE II²

Articles the growth, produce or manufacture of the Republic of Nicaragua, enumerated and described in Schedule II annexed to this Agree-

¹ For schedules annexed to agreement, see 50 Stat. 1426 or p. 18 of EAS 95.

² The agreement of Feb. 8, 1938 (EAS 120, *post*, p. 403), terminated the provisions of art. I, the first paragraph of art. II, art. III (except insofar as it related to note I to schedule I), and art. V.

³ 1 UST 701; TIAS 2133.

ment and made a part thereof, shall, on their importation into the United States of America, be exempt from ordinary customs duties in excess of those set forth in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under the laws of the United States of America in force on the day of the signature of this Agreement.

As long as the quota provisions of the Act "to include sugar beets and sugar cane as basic agricultural commodities under the Agricultural Adjustment Act, and for other purposes", approved by the President of the United States of America on May 9, 1934,⁴ are operative, any sugar imported into the United States of America from the Republic of Nicaragua with respect to which a drawback of duty is allowed, under the provisions of Section 313 of the Tariff Act of 1930,⁵ shall not be charged against the quota established by the Secretary of Agriculture of the United States of America for the Republic of Nicaragua.

ARTICLE III ²

The United States of America and the Republic of Nicaragua agree that the notes included in Schedules I and II are hereby given force and effect as integral parts of this Agreement.

ARTICLE IV

Articles the growth, produce or manufacture of the United States of America or the Republic of Nicaragua, shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national origin or any other foreign origin.

ARTICLE V ²

In respect of articles the growth, produce or manufacture of the United States of America or the Republic of Nicaragua, enumerated and described in Schedules I and II, respectively, imported into the other country, on which ad valorem rates of duty, or duties based upon or regulated in any manner by value, are or may be assessed, it is understood and agreed that the bases and methods of determining dutiable value and of converting currencies shall be no less favorable to importers than the bases and methods prescribed under presently existing laws and regulations of the Republic of Nicaragua and the United States of America, respectively.

⁴ 48 Stat. 670.

⁵ 46 Stat. 693.

ARTICLE VI

1. No prohibitions, import or customs quotas, import licenses, or any other form of quantitative regulation, whether or not operated in connection with any agency of centralized control, shall be imposed by the Republic of Nicaragua on the importation or sale of any article the growth, produce or manufacture of the United States of America enumerated and described in Schedule I, nor by the United States of America on the importation or sale of any article the growth, produce or manufacture of the Republic of Nicaragua, enumerated and described in Schedule II.

2. The foregoing provision shall not apply to:

(a) Prohibitions or restrictions (1) related to public security; (2) imposed on moral or humanitarian grounds; (3) designed to protect human, animal or plant life; (4) relating to prison-made goods; (5) relating to the enforcement of police or revenue laws; or

(b) Quantitative restrictions in whatever form imposed by the United States of America or by the Republic of Nicaragua on the importation or sale of any article the growth, produce or manufacture of the other country in conjunction with governmental measures operating to regulate or control the production, market supply or prices of like domestic articles, or tending to increase the labor costs of production of such articles. Whenever the Government of either country proposes to establish or change any restriction authorized by this subparagraph, it shall give notice thereof in writing to the other Government and shall afford such other Government an opportunity within thirty days after receipt of such notice to consult with it in respect of the proposed action; and if an agreement with respect thereto is not reached within thirty days following receipt of the aforesaid notice, the Government which proposes to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after such action is taken to terminate this Agreement in its entirety on thirty days' written notice.

3. It is understood that the provisions of this Article do not affect the application of measures directed against misbranding, adulteration and other fraudulent practices, such as are provided for in the pure food and drug laws of the United States of America, or the application of measures directed against unfair practices in import trade, such as are provided for in Section 337 of the United States Tariff Act of 1930.

ARTICLE VII

1. If the Government of the United States of America or the Republic of Nicaragua establishes or maintains any form of quantitative restriction or control of the importation or sale of any article in which the other country has an interest, or imposes a lower import duty or charge on the importation

or sale of a specified quantity of any such article than the duty or charge imposed on importations in excess of such quantity, the Government taking such action will:

(a) Give public notice of the total quantity, or any change therein, of any such article permitted to be imported or sold or permitted to be imported or sold at such lower duty or charge, during a specified period;

(b) Allot to the other country for such specified period a share of such total quantity as originally established or subsequently changed in any manner equivalent to the proportion of the total importation of such article which such other country supplied during a previous representative period, unless it is mutually agreed to dispense with such allotment; and

(c) Give public notice of the allotments of such quantity among the several exporting countries, and at all times upon request advise the Government of the other country of the quantity of any such article the growth, produce or manufacture of each exporting country which has been imported or sold or for which licenses or permits for importation or sale have been granted.

2. Neither the United States of America nor the Republic of Nicaragua shall regulate the total quantity of importations into its territory or sales therein of any article in which the other country has an interest, by import licenses or permits issued to individuals or organizations, unless the total quantity of such article permitted to be imported or sold, during a quota period of not less than three months, shall have been established, and unless the regulations covering the issuance of such licenses or permits shall have been made public before such regulations are put into force.

ARTICLE VIII

In the event that the Government of the United States of America or the Government of the Republic of Nicaragua establishes or maintains a monopoly for the importation, production or sale of a particular commodity or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular commodity, the Government of the country establishing or maintaining such monopoly, or granting such monopoly privileges, agrees that in respect of the foreign purchases of such monopoly or agency the commerce of the other country shall receive fair and equitable treatment. To this end it is agreed that in making its foreign purchases of any product such monopoly or agency will be influenced solely by those considerations, such as price, quality, marketability, and terms of sale, which would ordinarily be taken into account by a private commercial enterprise interested solely in purchasing such product on the most favorable terms.

ARTICLE IX

The tariff advantages and other benefits provided for in this Agreement are granted by the United States of America and the Republic of Nicaragua to each other subject to the condition that if the Government of either country shall establish or maintain, directly or indirectly, any form of control of foreign exchange, it shall administer such control so as to insure that the nationals and commerce of the other country will be granted a fair and equitable share in the allotment of exchange.

With respect to the exchange made available for commercial transactions, it is agreed that the Government of each country shall be guided in the administration of any form of control of foreign exchange by the principle that, as nearly as may be determined, the share of the total available exchange which is allotted to the other country shall not be less than the share employed in a previous representative period prior to the establishment of any exchange control for the settlement of commercial obligations to the nationals of such other country.

The Government of each country shall give sympathetic consideration to any representations which the other Government may make in respect of the application of the provisions of this Article, and if, within thirty days after the receipt of such representations, a satisfactory adjustment has not been made or an agreement has not been reached with respect to such representations, the Government making them may, within fifteen days after the expiration of the aforesaid period of thirty days, terminate this Article or this Agreement in its entirety on thirty days' written notice.

ARTICLE X

With respect to customs duties or charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties or charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all laws or regulations affecting the sale or use of imported goods within the country, any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or by the Republic of Nicaragua to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the Republic of Nicaragua or the United States of America, respectively.

ARTICLE XI

Laws, regulations of administrative authorities and decisions of administrative or judicial authorities of the United States of America or the Republic of Nicaragua, respectively, pertaining to the classification of articles for customs purposes or to rates of duty shall be published promptly in such

a manner as to enable traders to become acquainted with them. Such laws, regulations and decisions shall be applied uniformly at all ports of the respective country, except as otherwise specifically provided in statutes of the United States of America relating to articles imported into Puerto Rico, and excepting any provisions specifically adopted by the Government of Nicaragua in relation to ports on the Atlantic Coast.

No administrative ruling by the United States of America or the Republic of Nicaragua effecting advances in rates of duties or in charges applicable under an established and uniform practice to imports originating in the territory of the other country, or imposing any new requirement with respect to such importations, shall be effective retroactively or with respect to articles either entered for or withdrawn for consumption prior to the expiration of thirty days after the date of publication of notice of such ruling in the usual official manner. The provisions of this paragraph do not apply to administrative orders imposing anti-dumping duties, or relating to regulations for the protection of human, animal, or plant life or relating to public safety, or giving effect to judicial decisions.

ARTICLE XII

In the event that a wide variation occurs in the rate of exchange between the currencies of the United States of America and the Republic of Nicaragua, the Government of either country, if it considers the variation so substantial as to prejudice the industries or commerce of the country, shall be free to propose negotiations for the modification of this Agreement or to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE XIII

Greater than nominal penalties will not be imposed in the United States of America or in the Republic of Nicaragua upon importations of articles the growth, produce or manufacture of the other country because of errors in documentation obviously clerical in origin or where good faith can be established.

The Government of each country will accord sympathetic consideration to, and when requested will afford adequate opportunity for consultation regarding, such representations as the other Government may make with respect to the operation of customs regulations, quantitative restrictions or the administration thereof, the observance of customs formalities, and the application of sanitary laws and regulations for the protection of human, animal, or plant life.

ARTICLE XIV

Except as otherwise provided in the second paragraph of this Article, the provisions of this Agreement relating to the treatment to be accorded by the United States of America or by the Republic of Nicaragua, respec-

tively, to the commerce of the other country, shall not apply to the Philippine Islands, the Virgin Islands, American Samoa, the Island of Guam, or to the Panamá Canal Zone.

Subject to the reservations set forth in the third and fourth paragraphs of this Article, the provisions of Article X shall apply to articles the growth, produce or manufacture of any territory under the sovereignty or authority of the United States of America or of the Republic of Nicaragua, imported from or exported to any territory under the sovereignty or authority of the other country. It is understood, however, that the provisions of this paragraph do not apply to the Panamá Canal Zone.

The advantages now accorded or which may hereafter be accorded by the United States of America or by the Republic of Nicaragua to adjacent countries in order to facilitate frontier traffic, and advantages resulting from a customs union to which either the United States of America or the Republic of Nicaragua may become a party, shall be excepted from the operation of this Agreement.

The advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panamá Canal Zone to one another or to the Republic of Cuba shall be excepted from the operation of this Agreement. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panamá Canal Zone to the Philippine Islands irrespective of any change in the political status of the Philippine Islands.

The advantages now accorded or which may hereafter be accorded by the Republic of Nicaragua to the commerce of Costa Rica, El Salvador, Guatemala, Honduras or Panamá, so long as any special treatment accorded to the commerce of those countries or any of them by the Republic of Nicaragua is not accorded to any other country, shall be excepted from the operation of this Agreement.

Unless otherwise specifically provided in this Agreement, the provisions thereof shall not be construed to apply to police or sanitary regulations; and nothing in this Agreement shall be construed to prevent the adoption of measures prohibiting or restricting the exportation of gold or silver, or to prevent the adoption of such measures as either Government may see fit with respect to the control of the export or sale for export of arms, munitions, or implements of war, and, in exceptional circumstances, all other military supplies.

ARTICLE XV

In the event that the Government of the United States of America or the Government of Nicaragua adopts any measure which, even though it does not conflict with the terms of this Agreement, is considered by the Government of the other country to have the effect of nullifying or im-

pairing any object of the Agreement, the Government which has adopted any such measure shall consider such representations and proposals as the other Government may make with a view to effecting a mutually satisfactory adjustment of the matter.

ARTICLE XVI

The present Agreement shall, from the date on which it comes into force, supplant the Agreement between the United States of America and the Republic of Nicaragua, effected by exchange of notes signed on June 11, 1924, and July 11, 1924,⁶ respectively.

ARTICLE XVII

The present Agreement shall come into full force on the thirtieth day following proclamation thereof by the President of the United States of America and the President of the Republic of Nicaragua, or should the proclamations be issued on different days, on the thirtieth day following the date of the later in time of such proclamations, and shall remain in force for the term of three years thereafter, unless terminated pursuant to the provisions of Article VI, Article IX, or Article XII. The Government of each country shall notify the Government of the other country of the date of its proclamation.

Unless at least six months before the expiration of the aforesaid term of three years the Government of either country shall have given to the other Government notice of intention to terminate this Agreement upon the expiration of the aforesaid term, the Agreement shall remain in force thereafter, subject to termination under the provisions of Article VI, Article IX, or Article XII, until six months from such time as the Government of either country shall have given notice to the other Government.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, both authentic, at the City of Managua, this eleventh day of March, nineteen hundred and thirty six, A. D.

For the President of the United States of America:

ARTHUR BLISS LANE [SEAL]

For the President of the Republic of Nicaragua:

LEONARDO ARGÜELLO [SEAL]

[For schedules annexed to agreement, see 50 Stat. 1426 or p. 18 of EAS 95.]

⁶ TS 697, *ante*, p. 382.